
(1983) 07 AHC CK 0026
In the Allahabad High Court
Case No : Special Appeal No. 3 of 1982

U.P. Twiga Fiberglass Ltd.

APPELLANT

Vs

Parekh Marketing P. Ltd.

RESPONDENT

Date of Decision : 21-07-1983

Acts Referred:

Companies (Court) Rules, 1959 — Rule 24, 26, 96, 99

Citation : (1986) 59 CompCas 886

Hon'ble Judges : K.N. Singh, J;B.D. Agrawal, J

Bench : Division Bench

Advocate : Bharatji Agrawal, for the Appellant; Sudhir Chandra, for the Respondent

Final Decision : Dismissed

Judgement

B.D. Agrawal, J.—This appeal is directed against the order of the learned company judge dated August 16, 1982, in Company Petition No. 7 of 1982;

2. The petition giving rise to the appeal was presented by the respondent creditor against the appellant on May 21, 1982, u/s 439(1) of the Companies Act, 1956, for the winding up of the company. Learned company judge directed notice to issue. In compliance with the order dated May 21, 1982, notice was issued to the company and also to the directors for August 16, 1982, under registered cover. The office reported that acknowledgments had not returned nor were the notices received back undelivered. Learned company judge thereupon passed the impugned order on August 16, 1982, which reads :

" Service held sufficient on the respondent company under Chapter VIII, Rule 12 of the Rules of the Court.

The petition for winding up shall be advertised in the newspaper, Hindustan Times, published from New Delhi and Nav Bharat Times, also published from New Delhi, which is in Hindi. The petitioner shall get three advertisements made within a month. An affidavit along with the newspapers may be filed by the

petitioner within a period of six weeks from today. List the case immediately after the expiry of six weeks."

The petition was accordingly advertised in the Hindustan Times and Nav Bharat Times, Delhi, on September 8, 1982. The appellants' counsel who had put in appearance on August 17, 1982, applied on September 9, 1982, for the stay of the operation of the order dated August 16, 1982. Since the advertisement had come out already, this application was rejected on September 13, 1982, being infructuous.

3. Sri Bharatji Agrawal, learned counsel for the appellant, contends that advertisement could not issue without affording opportunity to the appellant to oppose the same. It is urged also that notice issued under order dated May 21, 1982, was not served upon all the directors of the appellant company and that the advertisement is defective since it was not made in the Official Gazette. All these contentions were countered by the respondent's learned counsel, Sri Sudhir Chandra.

4. A reference may at the outset be made to relevant provisions of Part III of the Companies (Court) Rules, 1959, which relates to "winding up" petitions. Rules 96 and 99 provide :

"96. Admission of petition and directions as to advertisement.--Upon the filing of the petition, it shall be posted before the judge in Chambers for admission of the petition and fixing a date for the hearing thereof and for directions as to the advertisements to be published and the persons, if any, upon whom copies of the petition are to be served. The judge may, if he thinks fit, direct notice to be given to the company before giving directions as to the advertisement of the petition."

" 99. Advertisement of petition.--Subject to any directions of the court, the petition shall be advertised within the time and in the manner provided by Rule 24 of these Rules. The advertisement shall be in Form No. 48."

5. Rules 24 and 26, which appear in Part-I (General) of these Rules, read as under:

" 24. Advertisement of petition.--(1) Where any petition is required to be advertised, it shall, unless the judge otherwise orders, or these Rules otherwise provide, be advertised not less than fourteen days before the date fixed for hearing, in one issue of the Official Gazette of the State or the Union Territory concerned, and in one issue each of a daily newspaper in the English language and a daily newspaper in the regional language circulating in the State or the Union Territory concerned, as may be fixed by the judge."

"26. Service of petition.--Every petition shall be served on the respondent, if any, named in the petition and on such other persons as the Act or these Rules may require or as the judge or the Registrar may direct. Unless otherwise ordered, a copy of the petition shall be served along with the notice of the petition."

6. In *National Conduits (P) Ltd. Vs. S.S. Arora*, , the Supreme Court considered the alternatives open to the High Court when a petition is filed before it for winding up of a company under the order of the court and specified them as under (at page 788 of 37 Comp Cas):

" (i) the High Court may issue notice to the company to show cause why the petition should not be admitted ;

(ii) may admit the petition and fix a date for hearing, and issue a notice to the company before giving directions about advertisement of the petition; or

(iii) may admit the petition, fix the date of hearing of the petition, and order that the petition be advertised and direct that the petition be served upon persons specified in the order. "

7. In the case of a petition to wind up a company, the judge may not dispense with advertisement required by the Rules. This is clear from Sub-rule (2) of Rule 24. The appellant's learned counsel urged that the learned company judge could not give directions for advertisement without considering whether notice had to be given first to the company in this behalf. Stress was laid by him in this connection upon the observation of the Supreme Court in the case of *National Conduits (P) Ltd. Vs. S.S. Arora*,

" But that is not to say that as soon as the petition is admitted, it must be advertised..... The view taken by the High Court that the court must, as soon as the petition is admitted, advertise the petition, is contrary to the plain terms of Rule 96. Such a view, if accepted, would make the court an instrument, in possible cases, of harassment and even of blackmail, for once a petition is advertised, the business of the company is bound to suffer serious loss and injury."

In the present case, submits the respondents' learned counsel, that the learned judge did not direct advertisement of the petition for winding up of the company straightway on its presentation. Care was taken to issue notice before directing advertisement. The direction for advertisement was made on August 16, 1982 ; this was subsequent to the order given on May 21, 1982 (when the petition was filed), to issue notice. It cannot, therefore, be said legitimately, in the instant case that Rule 96 was not observed in *National Conduits (P) Ltd. Vs. S.S. Arora*, . Before the advertisement could be made, the appellant company had filed its reply controverting the allegations made by the respondent. The learned company judge had directed that the petition be not advertised and be dismissed. In appeal against this order, the Delhi High Court took the view that once the petition is admitted to the file, the court is bound forthwith to advertise the petition. The company challenged that order before the Supreme Court and the observations quoted above were made by the Supreme Court in setting aside that order. No such contingency arose in the present case since notice was in fact issued and no objections were filed before the petition was advertised.

8. Learned counsel for the appellant then submitted that in the order dated August 16, 1982, the learned judge recorded satisfaction that service of notice was sufficient on the "company"; but notices had been issued to the directors also and since it was not observed that the directors too had been served, the direction for advertisement could not be given. The submission is devoid of force in our opinion. Rule 96 envisages notice to be given to the "company" which undisputedly is a legal entity distinct from the directors. Rule 26 referred to by the learned counsel is general; that does not control the requirement of Rule 96 to serve "the company". The notices issued to the directors under the order dated May 21, 1982, were, in other words, not strictly required to go before the direction for advertisement of the petition could be passed. The notice issued to the company was served through the managing director; indeed, as the office reported later on September 13, 1982, upon return of notices, notice was actually served upon nine out of thirteen directors as well. No invalidity, therefore, arises on this account.

9. Sri Bharatji Agarwal next invited the attention of this court to the contents of the notice issued for August 16, 1982, and argued that this was for hearing of the petition and not for objections, if any, to the direction being given for advertisement of the petition and hence this does not fulfill the requirement of Rule 96. The argument is untenable. The notice to the company under Rule 96 is not required to issue in any prescribed pro forma. The company has only to be apprised of the fact that a petition for winding up has been filed (The notice was, of course, accompanied with a copy of the petition). In the context, notice would mean only "information" or knowledge of facts which would naturally lead an honest and prudent person to make enquiry (Black's Law Dictionary, 5th edition, 1979, page 957). The course adopted by the learned company judge in the instant case is covered squarely under the alternative (ii) enunciated by the Supreme Court in *National Conduits (P) Ltd. Vs. S.S. Arora*, wherein the judge may admit the petition, fix the date of hearing of the petition and order that the petition be served upon persons specified in the order. In *Extrusion Processes (P) Ltd. v. Jivabhai Marghabhai Patel* [1966] 36 Comp Cas 60 (Bom), the Bombay High Court took the view that on a plain reading of Rule 96, there is no right in a company to be issued a notice before a petition is admitted nor before the court fixed the date for hearing.

10. The appellant's learned counsel urged that the advertisement of the petition made in the Hindustan Times and the Nav Bharat Times on September 8, 1982, does not satisfy Rule 24(1) since the petition had also to be advertised in the Gazette on the date on which advertisement in the news papers was made. This overlooks that the provision contained in Rule 24 (1) is general with a specific rider, namely, "unless the judge otherwise orders, or those rules otherwise provide". Rule 99 which specifically deals with advertisement of petition for winding up lays down expressly that the manner provided for advertisement in Rule 24 is "subject to any direction of the court". This leaves no room for doubt, in our view, that the learned company judge could give specific directions with

respect to advertisement, as he did under the impugned order, and dispense with publication in the Gazette.

11. Lastly, the appellants' learned counsel referred to the principle that a winding-up petition is not a legitimate means of seeking to enforce payment of a debt which is bona fide disputed by a company and where a petition presented ostensibly for a winding-up order is really to exercise pressure, the same is liable to dismissal since that involves abuse of the process of the court. In support of this, the learned counsel cited *Amalgamated Commercial Traders (P.) Ltd. Vs. A.C.K. Krishnaswami and Another*, ; *Mohd. Amin Bros Ltd. v. Dominion of India*, AIR 1952 Cal 323 ; *Bengal Luxmi Cotton Mills Ltd. and Others Vs. Mahaluxmi Cotton Mills Ltd. and Others*, . It does not appear, however, that this has a bearing in so far as the scope of this appeal is concerned. The appellant is not precluded from raising appropriate pleas on merits in opposition to the winding-up petition. Suffice it to say, that appearance for the appellant company was put in this case on August 17, 1982, through counsel. This was just a day after the impugned order was passed. The advertisement of the petition took place long afterwards. If the appellant company was genuinely interested in preventing advertisement of the petition lest this causes loss or injury and not so much in delaying the proceedings, there appears no satisfactory ground why objection against the issue of advertisement should not have been made at the earlier opportunity on the 17th aforesaid or immediately thereafter.

12. The appeal, in our opinion, is devoid of force and is dismissed with costs to the respondent which we assess at Rs. 300 only. The interim order dated September 28, 1982, is vacated.